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4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 TEHRI E.,

7 Plaintiff,

8 v.

9 COMMISSIONER OF SOCIAL  
SECURITY,

10 Defendant.

Case No. 2:18-CV-01402

ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS

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12 Plaintiff has brought this matter for judicial review of defendant's denial of her  
13 applications for disability insurance and supplemental security income benefits. The parties have  
14 consented to have this matter heard by the undersigned Magistrate Judge. For the reasons set  
15 forth below, defendant's decision to deny benefits is reversed and remanded for additional  
16 proceedings to determine whether plaintiff is disabled.

17 I. ISSUES FOR REVIEW

- 18  
19 1. Did the ALJ err in evaluating medical evidence, including: a. finding  
20 Plaintiff's migraines to be a non-severe impairment; b. rejecting opinion  
evidence by treating physicians; and c. failing to include the migraine  
21 headache limitations in the RFC?  
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23 2. Did the ALJ err in rejecting a portion of Plaintiff's testimony?  
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1 II. FACTUAL AND PROCEDURAL HISTORY

2 Plaintiff first applied for disability insurance and supplemental security income benefits  
3 on May 12, 2011. Dkt. 8., Administrative Record (AR) 114. Plaintiff initially alleged that she  
4 became disabled on November 9, 2009. AR 114. Plaintiff's applications were denied initially and  
5 on reconsideration on July 1, 2011 and October 4, 2011 respectively. AR 114. After a hearing, an  
6 Administrative Law Judge (ALJ) issued an unfavorable decision on May 24, 2012. AR 111-127.  
7 On April 1, 2013, the Social Security Appeals Council denied Plaintiff's request for review. AR  
8 132-137. Plaintiff then appealed the ALJ's decision to the United States District Court for the  
9 Western District of Washington (Court), which affirmed the ALJ's decision on January 31, 2014.  
10 AR 190-200.

11 Plaintiff did not appeal, and instead applied again for disability insurance benefits on July  
12 30, 2014 and for supplemental security income benefits on September 22, 2014. AR 32, 337-338,  
13 339-347; the ALJ determined an alleged onset date of May 25, 2012.<sup>1</sup> AR 32, 70. Plaintiff's new  
14 applications for disability insurance and supplemental security income benefits were denied  
15 initially and on reconsideration on January 13, 2015 and April 22, 2015, respectively. AR 32,  
16 201-209, 214-218, 219-225.

17 On November 7, 2016, ALJ Ilene Sloan held a hearing on plaintiff's 2014 applications.  
18 AR 67-110. On April 13, 2017, the ALJ issued an unfavorable decision. AR 29-46. The Appeals  
19 Council denied Plaintiff's request for review. AR 8-14. Plaintiff appealed to this Court and seeks  
20 reversal and remand for additional proceedings. Dkt. 10, p. 17.

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24 <sup>1</sup> ALJ Sloan found that because the prior ALJ's decision was administratively final, the timeframe for consideration  
25 of Plaintiff's new applications began the day after the prior ALJ decision, May 25, 2012. AR 32, 70.

### III. STANDARD OF REVIEW

The Court will uphold an ALJ's decision unless: (1) the decision is based on legal error; or (2) the decision is not supported by substantial evidence. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). This requires “more than a mere scintilla,” though “less than a preponderance” of the evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 674-75 (9th Cir. 2017).

The Court must consider the administrative record as a whole. *Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014). The Court is required to weigh both the evidence that supports, and evidence that does not support, the ALJ's conclusion. *Id.* The Court may not affirm the decision of the ALJ for a reason upon which the ALJ did not rely. *Id.* Only the reasons identified by the ALJ are considered in the scope of the Court's review. *Id.*

### IV. DISCUSSION

The Commissioner employs a five-step sequential evaluation process to determine if a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920. At step two, an impairment does not meet the requirements for “severe” if it does not “significantly limit” a claimant's mental or physical abilities to do basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c); Social Security Ruling (SSR) 96-3p, 1996 WL 374181, at \*1. Basic work activities are those “abilities and aptitudes necessary to do most jobs.” 20 C.F.R. §§ 404.1522(b), 416.920(c); SSR 85-28, 1985 WL 56856, at \*3. An impairment is not severe if the evidence establishes only a slight abnormality that has “no more than a minimal effect on an individual[']s ability to work.” SSR

1 85-28, 1985 WL 56856, at \*3; *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).

2 The ALJ assesses the claimant’s residual functional capacity (“RFC”) to determine  
3 whether he or she can perform past work or make an adjustment to other work. *Kennedy v.*  
4 *Colvin*, 738 F.3d 1172, 1175 (9th Cir. 2013). It is the ALJ’s burden to show, at step five, the  
5 claimant can perform jobs that exist “in significant numbers in the national economy.” *Hill v.*  
6 *Astrue*, 698 F.3d 1153, 1161 (9th Cir. 2012); 20 C.F.R. §§ 404.1520(e), 416.920(e).

7 In this case, the ALJ determined that Plaintiff had the residual functional capacity to  
8 perform:

9 sedentary work as defined in 20 CFR 404.1567(a) and 416.967(a) including  
10 the ability to do the following. She can occasionally balance, stoop, kneel, crouch  
11 and crawl. She can never climb ladders, ropes or scaffolds. She can occasionally  
12 climb stairs. She can frequently push/pull with the bilateral upper extremities. She  
should avoid concentrated exposure to hazards and moving machinery and  
unprotected heights.

13 AR 38 (citations omitted). Based on the vocational expert’s testimony, the ALJ determined that  
14 Plaintiff was able to perform her past relevant work as an administrative assistant, receptionist,  
15 and/or a technical publications writer. AR 42-43, 103-104.

16 The ALJ also made alternate step five findings. Based on the vocational expert’s  
17 testimony that an individual with the same RFC as plaintiff—and the same age, education, and  
18 work experience—could perform jobs existing in significant numbers in the national economy,  
19 the ALJ determined that were a significant number of sedentary, unskilled jobs Plaintiff could  
20 perform at step five. AR 44-45, 104-105.

1           A. Step Two Determination

2           Plaintiff contends that the ALJ erred in finding her migraines to be a non-severe  
3 impairment at step two of the sequential evaluation. Dkt. 10, pp. 3-8. Plaintiff alleges that the  
4 ALJ erred by concluding that Plaintiff's migraines had responded well to treatment and that her  
5 presentation at office visits had been normal. Dkt. 10, p. 3.

6           Even if the ALJ erred in finding Plaintiff's migraines non-severe, this would constitute  
7 harmless error. The Ninth Circuit has "recognized that harmless error principles apply in the  
8 Social Security Act context." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (citing *Stout*  
9 *v. Commissioner, Social Security Administration*, 454 F.3d 1050, 1054 (9th Cir. 2006)  
10 (collecting cases)).

11           In *Buck v. Berryhill*, the Ninth Circuit recent emphasized that in assessing the RFC, an  
12 ALJ must consider limitations and restrictions imposed by all the impairments, even those that  
13 are not 'severe', and that an RFC should be precisely the same regardless of whether certain  
14 impairments were found severe at step two of the sequential evaluation. 869 F.3d 1040, 1049  
15 (9th Cir. 2017) (citing Titles II & XVI: Assessing Residual Functional Capacity in Initial Claims,  
16 Social Security Ruling ("SSR") 96-8p, 1996 WL 374184, at \*5 (S.S.A. July 2, 1996)). In *Buck*,  
17 the Ninth Circuit concluded that because the ALJ decided step two in the claimant's favor and  
18 was required to consider all impairments in the RFC, whether "severe" or not, "[a]ny alleged  
19 error is therefore harmless and cannot be the basis for a remand." *Id.* (citing *Molina v. Astrue*,  
20 674 F.3d 1104, 1115 (9th Cir. 2012)).

21           In this case, the ALJ decided step two in Plaintiff's favor, finding that Plaintiff had the  
22 severe impairments of fibromyalgia and obesity. AR 35. Although there may be reason to  
23 distinguish *Buck* in a situation where the ALJ's RFC analysis showed that the ALJ did not  
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1 consider certain impairments in the RFC after finding them non-severe at step two, *see Winkle v.*  
2 *Berryhill*, No. C17-1633 TSZ, 2018 WL 5669018, at \*2 (W.D. Wash. Nov. 1, 2018), in the  
3 present case, the ALJ considered plaintiff's migraines when determining the RFC (including  
4 balancing limitations in Plaintiff's RFC to account for the combined effects of her migraines,  
5 obesity, and fibromyalgia). AR 41-42. The Court therefore finds this error was harmless.

6 B. Medical Opinion Evidence

7 1. Dr. Jaffy

8 Plaintiff contends the ALJ erred by discounting the opinion of Plaintiff's treating  
9 physician, Matthew Jaffy, M.D. Dkt. 10, pp. 16-17. Dr. Jaffy completed a physical functional  
10 evaluation form concerning Plaintiff's impairments in May 2016. AR 557-559. Dr. Jaffy  
11 assessed Plaintiff as being unable to perform a range of physical activities due to her migraines,  
12 fibromyalgia, and chronic fatigue syndrome (AR 558); he checked boxes on the form indicating  
13 that he thought Plaintiff was "severely limited" and was unable to meet the demands of sedentary  
14 work. AR 559.

15 The ALJ gave little weight to Dr. Jaffy's opinion, finding that it was a "check-box"  
16 opinion that relied heavily on Plaintiff's subjective allegations. AR 42. The ALJ found evidence  
17 of this in Section D of the form, where:

18 Although Section D in this template form asks for the medical professional to,  
19 "[a]ttach chart notes detailing examination findings," Dr. Jaffy did not do so. This  
20 also indicates that Dr. Jaffy based his opinion on what the claimant told him  
21 instead of what the evidence shows. Dr. Jaffy did however, recommend that the  
22 claimant should become more active through physical therapy. This suggests that  
23 with increased physical activity, the claimant's overall health will improve.

24 AR 42 (citations omitted).

25 Plaintiff contends that the ALJ erred in citing Dr. Jaffy's decision not to attach his  
examination findings as a reason to discount his opinion, since Dr. Jaffy's treatment notes are

1 contained elsewhere in the record. Dkt. 10, p. 16. Even if the ALJ had considered the treatment  
2 notes cited by Plaintiff, this would have no effect on the ALJ's overall decision. Dr. Jaffy  
3 examined Plaintiff on May 16, 2016 and completed the DSHS evaluation form on the same day.  
4 AR 557-559, 587-593. Dr. Jaffy findings do not reference any data from this examination, or  
5 from plaintiff's medical history, that would explain the severe limitations assessed by Dr. Jaffy.  
6 *See Garrison v. Colvin*, 795 F.3d 995, 1008 (9th Cir. 2014) (Check box forms completed by  
7 physicians that have significant experience with a patient and are based on numerous records are  
8 entitled to weight that unsupported and unexplained check box forms do not merit).

9 Therefore, the ALJ did not err in deciding that Dr. Jaffy's conclusions concerning  
10 Plaintiff's migraine-related-limitations were based principally on a check-the-box form without  
11 independent examination findings or indications that Dr. Jaffy conducted an independent review  
12 of the plaintiff's medical records.

## 13 2. Dr. Murinova

14 Plaintiff argues that the ALJ did not adequately assess statements from Plaintiff's treating  
15 physician, Dr. Murinova -- that Plaintiff's migraines were "severe" and "disabling". Dkt. 10, p.  
16 7. The Court is mindful that Dr. Murinova noted that Plaintiff's migraine related pain symptoms  
17 improved significantly during 2012-2013, AR 450, when she received Botox treatments; yet  
18 there is also a notation by Dr. Murinova that plaintiff's insurance would not cover any Botox  
19 treatment as of October 2013; due to insurance problems, plaintiff was unable to obtain Botox  
20 treatment for more than a year. AR 494, 496. Apparently, the last Botox treatment plaintiff  
21 received during her first round of treatment that occurred in 2012-13 -- before her insurance  
22 problems caused the treatments to be suspended -- was during the month of August, 2013. AR  
23 448-450, 476, 494-496.

1 When she met with Dr. Murinova in June 2014, (after which Dr. Murinova started  
2 plaintiff on a second round of Botox treatment on October 1, 2014, AR 476), she told Dr.  
3 Murinova she had been suffering from “bad migraines 17 to 18 days per month”. AR 495. Dr.  
4 Murinova stated that plaintiff previously experienced a 75% reduction in migraine pain in the  
5 past while being treated with Botox (during the period before her last treatment in August 2013 –  
6 and then her insurance stopped covering it in October 2013). AR 496. Therefore, the ALJ’s  
7 decision concerning Dr. Murinova’s medical assessment is supported by the record as to the  
8 period between May 25, 2012 and August of 2013.

9 But the ALJ’s decision is not supported by substantial evidence after August 2013,  
10 because plaintiff was not covered by insurance and therefore stopped receiving Botox injections  
11 until October 1, 2014; the evidence concerning plaintiff’s migraine symptoms after August 2013  
12 is ambiguous, and therefore a remand is required -- as discussed below.

13 Plaintiff further contends that the ALJ erred in evaluating the opinion of State agency  
14 consultant Norman Staley, M.D. Dkt. 10, p. 7-8. Specifically, Plaintiff contends that the ALJ  
15 erred by assigning Dr. Staley’s opinion great weight while not addressing Dr. Staley’s finding  
16 that Plaintiff’s migraines were a severe impairment. Dkt. 10, p. 7-8. The record shows that James  
17 Bailey, Ph.D., not Dr. Staley, opined that Plaintiff’s migraines were a severe impairment. AR  
18 171, 173-175, 183. It is unnecessary for the ALJ to “discuss *all* evidence presented”. *Vincent on*  
19 *Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation omitted)  
20 (emphasis in original). The ALJ must only explain why “significant probative evidence has been  
21 rejected.” *Id.* The Court finds no error with respect to the ALJ’s decision regarding the opinion  
22 of Dr. Staley.



1 C. Evaluation of Plaintiff's Subjective Allegations

2 Plaintiff alleges that the ALJ erred when evaluating Plaintiff's subjective allegations  
3 concerning the limiting effects of her migraines. Dkt. 10, pp. 8-15. In assessing a Plaintiff's  
4 credibility, the ALJ must determine whether Plaintiff has presented objective medical evidence  
5 of an underlying impairment. If such evidence is present and there is no evidence of malingering,  
6 the ALJ can only reject Plaintiff's testimony regarding the severity of her symptoms for specific,  
7 clear and convincing reasons. *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9<sup>th</sup> Cir. 2014).

8 As discussed above concerning the opinion evidence of Dr. Murinova, Plaintiff has  
9 presented objective medical evidence to support her allegations of symptoms and limitations due  
10 to migraines, as to the period between August 1, 2013 and present.

11 In a June 2017 function report, Plaintiff alleged that she has had severe migraines for 20  
12 days per month for almost a decade, stating that her migraines "throw my neurological system  
13 off." AR 20. In a function report from 2014, Plaintiff alleged that her migraines "completely  
14 incapacitate" her for an entire day and last for between one week and three months. AR 387.  
15 Plaintiff alleged that her migraines cause severe nausea, dizziness, balance problems,  
16 hallucinations, and sensitivity to light and color. AR 20, 75-76, 82, 97-98, 387.

17 Plaintiff alleges that she has difficulties dressing, bathing, and caring for her hair due to  
18 the dizziness caused by her migraines. AR 21, 388. Plaintiff further stated that she requires  
19 reminders to eat because she loses time due to her migraines and stated that it is impossible for  
20 her to maintain a routine. AR 22, 26. Plaintiff stated that she has difficulty driving a car, walking,  
21 going outside, preparing food or using the toilet due to the danger caused by her hallucinations  
22 and dizziness. AR 21, 81, 94, 390, 531. Plaintiff stated that on bad days she cannot walk more  
23 than two yards before needing to rest, pay attention for more than 45 seconds to 10 minutes at a  
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1 time, or follow written or spoken instructions. AR 25, 392. Plaintiff alleges that when she gets  
2 really dizzy she uses a cane and/or a brace to remain standing. AR 26, 393.

3 During the hearing, Plaintiff testified that her migraines are a disruption in her  
4 neurological tissue that are sometimes accompanied by pain but are “always” accompanied by  
5 hallucinations. AR 94. Plaintiff testified that her hallucinations distort her senses, and that she  
6 was almost hit by a car on several occasions because her migraines made it seem that the cars  
7 were far away when they were nearby. AR 75-76. Plaintiff testified that she is unable to use a  
8 fork or knife because she has repeatedly cut herself due to her distorted senses. AR 76, 78.

9 Plaintiff also stated that she sometimes has difficulty forming sentences due to her migraines,  
10 and that when she has a bad migraine, she can only form eight words at a time. AR 531.

11 Plaintiff stated that her physician, Natalia Murinova, M.D., told her that her migraines are  
12 neurological in nature, and that full spectrum hallucinations are not uncommon with such a  
13 condition. AR 96. She added that her hallucinations caused her to feel as though “dirty, sticky,  
14 gritty people” were pressing themselves up against her randomly. AR 96, 531.

15 During the hearing, Plaintiff testified that she takes Ondansetron, which reduces her  
16 nausea symptoms. AR 77, 79. Plaintiff also takes Cyclobenzaprine, which reduces the frequency  
17 of her migraines. AR 79. Plaintiff’s primary treatment for her migraines consists of Botox  
18 treatments. Plaintiff testified that Botox reduces the pain caused by her migraines but does not  
19 affect her other symptoms such as nausea, vomiting, light sensitivity, or hallucinations. AR 80.

20 In July 2012, Plaintiff reported that she was having one headache per month and rated her  
21 pain as a five on a scale of ten. AR 475. By August 2012, Plaintiff reported that she was having  
22 between 15 and 20 migraines per month, but that the intensity of her migraines had improved by  
23 at least 40 percent after Botox therapy and that her mood was mostly upbeat despite periods of  
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1 frustration. AR 470-472. In September 2012, Plaintiff reported that she was having one or two  
2 headaches per week, and that her mood was generally good. AR 469. In October 2012, Plaintiff's  
3 physician Dr. Murinova again characterized Plaintiff's mood as "very pleasant" and noted that  
4 Plaintiff's migraines had decreased following Botox treatments, with no migraines in the areas of  
5 previous Botox treatments. AR 461. Plaintiff stated that her mood was "even keel" and that she  
6 was "fairly good natured." AR 464.

7 In January 2013, Plaintiff stated that her mood was good, and reported a decrease in her  
8 migraines following Botox treatment, and stated that she had no migraines at all in the areas of  
9 previous Botox injections. AR 457, 460. Plaintiff's physician, Dr. Murinova characterized  
10 Plaintiff as being "very pleasant" and confirmed that Plaintiff's migraines were much better in  
11 the areas where she'd received Botox injections. AR 457. Dr. Murinova noted that Plaintiff was  
12 tolerating Botox treatment without any difficulty and noted that Botox injections had  
13 significantly improved the frequency and intensity of her migraines. AR 459.

14 During an April 2013 visit, Dr. Murinova characterized her as extremely pleasant, and  
15 Plaintiff reported that she was sleeping well and stated that her mood was good. AR 452, 456.  
16 Dr. Murinova noted that following Botox treatment Plaintiff's migraines had reduced in both  
17 frequency and intensity. AR 452. At this time, Plaintiff reported that her Botox treatments had  
18 reduced the frequency of her migraines to two days per month. AR 452, 456. Dr. Murinova  
19 characterized this as a "significant" decrease and noted that Botox treatments had "significantly  
20 helped" Plaintiff. AR 454.

21 At the time of the Botox injections she received on August 1, 2013, Plaintiff stated that  
22 she had one headache per week since her last visit (and she also reported one headache per  
23 month). AR 451. In addition, she described the pain as 9/10, stabbing, sharp, and blinding.

1 Plaintiff also reported between 70 and 80 percent improvement in her migraine-related-pain-  
2 symptoms. AR 448-51. She experienced headache, memory problems, trouble concentrating,  
3 lack of energy, trouble with sleep, and dizziness; her mood was upbeat. AR 451.

4 Plaintiff did not receive any Botox injections between August 2013 and October 2014  
5 due to a lapse in her insurance. AR 476, 551. In June 2014, Plaintiff told Dr. Murinova that after  
6 stopping her Botox treatment, her headaches increased in frequency from twice a week to 17 or  
7 18 days per month. AR 495. During an office visit in October 2014, Plaintiff stated that she  
8 wanted to re-start her Botox treatment because they had reduced her pain symptoms by 75  
9 percent. AR 476.

10 Plaintiff underwent a consultative psychological examination with Kate Lund, Psy.D. in  
11 in December 2014. AR 529-533. As part of the examination, Dr. Lund conducted a clinical  
12 interview and a mental status examination. Plaintiff made statements concerning the frequency  
13 and intensity of her hallucinations, and Dr. Lund observed that Plaintiff was oriented to person,  
14 place, and time. AR 531. Dr. Lund further observed that Plaintiff's mood and affect were natural,  
15 that she was pleasant and cooperative, that her thought processes were linear and goal directed,  
16 and that her thought content was appropriate. AR 531-532. Dr. Lund also noted that Plaintiff's  
17 insight and judgment were good. AR 532. Dr. Lund noted that during the examination there was  
18 no evidence of delusions or hallucinations, and she assessed that plaintiff would require  
19 comprehensive treatment (medical and psychological). AR 532. And, Dr. Lund stated that  
20 "[f]ull-time sustained employment is unlikely at the present time based on the range of  
21 challenges outlined in this report." *Id.* Dr. Lund also found that "when her migraine symptoms  
22 are particularly intense the claimant experiences sensory disturbances, which impact her ability  
23 to engage in activities such as using a fork and knife to feed herself, brushing her hair and  
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1 showering. . . [claimant experiences difficulty with word finding, speaking and overall  
2 comprehension at points during a migraine. As noted, claimant does not drive. The claimant's  
3 history with these noted symptoms has significantly impacted her overall function and her ability  
4 to engage in activities. . ." AR 533-34.

5 Plaintiff reported a flare up of her migraines symptoms in January 2015, after she re-  
6 started Botox therapy. AR 551. By March 2015, Plaintiff noted that the intensity of her migraines  
7 had improved by between 30 and 50 percent. AR 538. In April 2015, Plaintiff stated that while  
8 Botox treatments helped with her pain symptoms, she continued to experience hallucinations,  
9 photophobia, nausea, and vomiting. AR 625. In June and September 2015, Plaintiff again  
10 reported a 30 to 50 percent improvement in the intensity of her migraines. AR 673, 691. In  
11 January 2016 Plaintiff stated that Botox had decreased the intensity of her migraines by between  
12 40 and 60 percent, that she had two or three headache free days per month, and that she had not  
13 had a migraine at all for a week. AR 668. By April 2016, Plaintiff continued to report  
14 improvement in her symptoms, stating that the intensity of her migraines had improved by 40 to  
15 60 percent. AR 662.

16 The ALJ found that Plaintiff's presentation during office visits was normal, and that  
17 "common-sense" suggests that if any of Plaintiff's physicians found her symptom complaints  
18 credible she would likely have been hospitalized for further examination. AR 37. Plaintiff has  
19 repeatedly stated that her Botox injections have no effect on her hallucinations. AR 80, 625. The  
20 ALJ has not alleged or pointed to any evidence suggesting that Plaintiff is malingering.

21 Plaintiff also argues that the ALJ erred in finding that Plaintiff's activities of daily living  
22 did not support her allegations concerning her migraine symptoms. Dkt. 10, pp. 11-14. Plaintiff  
23 disputes the ALJ's finding that Plaintiff's ability to work on a novel, write legibly, and engage in  
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1 a casual romantic relationship were grounds to reject Plaintiff's migraine related allegations. Dkt.  
2 10, pp. 11-14. The ALJ reasoned that the extreme limitations Plaintiff alleged with respect to her  
3 migraine-related hallucinations and delusions would render her incapable of performing even  
4 basic activities. AR 40-41. Plaintiff's argument has merit, because a finding that Plaintiff could  
5 perform these activities would not, by itself, be sufficient to support a conclusion that Plaintiff  
6 could sustain full time work activity.

7       The ALJ has provided clear and convincing reasons for rejecting Plaintiff's allegations  
8 concerning the severity of her migraine related symptoms with respect to the period of May 2012  
9 through July 2013. On and after August 1, 2013, the record is ambiguous, and a remand is  
10 required for the Commissioner to further develop the record for the period of August 1, 2013 to  
11 present. The Commissioner is directed to fully develop the record concerning plaintiff's medical  
12 and psychological conditions existing August 1, 2013 to present, and consider the severity of her  
13 symptoms as well as any impact those symptoms may have on her functioning. Then the  
14 Commissioner is directed to conduct five-step analysis on this fully developed record.

1 CONCLUSION

2 Based on the foregoing discussion, the Court affirms the ALJ's decision as to the period  
3 from May 25, 2012 through July 31, 2013. The Court finds the ALJ erred in determining plaintiff  
4 to be not disabled for the period from August 1, 2013 to present, and Defendant's decision to  
5 deny benefits therefore is reversed and remanded for additional proceedings concerning that  
6 period.

7 Dated this 9th day of September, 2019.

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Theresa L. Fricke  
11 United States Magistrate Judge  
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